

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

HOUSE BILL 1438

4
5 By: Representatives Williams, Steel
6 By: Senator R. Thompson

For An Act To Be Entitled

7
8
9 AN ACT TO ESTABLISH THE ARKANSAS ARBITRATION ACT; AND
10 FOR OTHER PURPOSES.

Subtitle

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12
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14 TO ESTABLISH THE ARKANSAS ARBITRATION
15 ACT.

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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19
20 SECTION 1. Arkansas Code Title 16, Chapter 108, Subchapter 2 is
21 amended to read as follows:

22 16-108-201. ~~Agreement to arbitrate~~—Application Definitions.

23 ~~(a) A written agreement to submit any existing controversy to~~
24 ~~arbitration arising between the parties bound by the terms of the writing is~~
25 ~~valid, enforceable, and irrevocable, save upon such grounds as exist for the~~
26 ~~revocation of any contract.~~

27 ~~(b)(1) A written provision to submit to arbitration any controversy~~
28 ~~thereafter arising between the parties bound by the terms of the writing is~~
29 ~~valid, enforceable, and irrevocable, save upon such grounds as exist for the~~
30 ~~revocation of any contract.~~

31 ~~(2) This subsection shall have no application to personal injury~~
32 ~~or tort matters, employer-employee disputes, nor to any insured or~~
33 ~~beneficiary under any insurance policy or annuity contract.~~

34 As used in this subchapter:

35 (1) "Arbitration organization" means an association, agency, board,
36 commission, or other entity that is neutral and initiates, sponsors, or



1 administers an arbitration proceeding or is involved in the appointment of an
 2 arbitrator;

3 (2) "Arbitrator" means an individual appointed to render an award,
 4 alone or with others, in a controversy that is subject to an agreement to
 5 arbitrate;

6 (3) "Court" means a court of competent jurisdiction in this state;

7 (4) "Knowledge" means actual knowledge;

8 (5) "Person" means:

9 (A) An individual;

10 (B) A corporation;

11 (C) A business trust;

12 (D) An estate;

13 (E) A trust;

14 (F) A partnership;

15 (G) A limited liability company;

16 (H) An association;

17 (I) A joint venture;

18 (J) A government;

19 (K) A governmental subdivision, agency, or instrumentality;

20 (L) A public corporation; or

21 (M) Any other legal or commercial entity; and

22 (6) "Record" means information that is inscribed on a tangible medium
 23 or that is stored in an electronic or other medium and is retrievable in
 24 perceivable form.

25
 26 ~~16-108-202. Proceedings to compel or stay arbitration Notice.~~

27 ~~(a) On application of a party showing an agreement described in § 16-~~
 28 ~~108-201 and the opposing party's refusal to arbitrate, the court shall order~~
 29 ~~the parties to proceed with arbitration, but if the opposing party denies the~~
 30 ~~existence of the agreement to arbitrate, the court shall proceed summarily to~~
 31 ~~the determination of the issue so raised and shall order arbitration if found~~
 32 ~~for the moving party; otherwise, the application shall be denied.~~

33 ~~(b) On application, the court may stay an arbitration proceeding~~
 34 ~~commenced or threatened on a showing that there is no agreement to arbitrate.~~
 35 ~~Such an issue, when in substantial and bona fide dispute, shall be forthwith~~
 36 ~~and summarily tried and the stay ordered if found for the moving party. If~~

1 found for the opposing party, the court shall order the parties to proceed to
2 arbitration.

3 ~~(c) If an issue referable to arbitration under the alleged agreement~~
4 ~~is involved in an action or proceeding pending in a court having jurisdiction~~
5 ~~to hear applications under subdivision (a) of this section, the application~~
6 ~~shall be made therein. Otherwise, and subject to § 16-108-218, the~~
7 ~~application may be made in any court of competent jurisdiction.~~

8 ~~(d) Any action or proceeding involving an issue subject to arbitration~~
9 ~~shall be stayed if an order for arbitration or an application therefor has~~
10 ~~been made under this section, or, if the issue is severable, the stay may be~~
11 ~~with respect thereto only. When the application is made in the action or~~
12 ~~proceeding, the order for arbitration shall include the stay.~~

13 ~~(e) An order for arbitration shall not be refused on the ground that~~
14 ~~the claim in issue lacks merit or bona fides or because any fault or grounds~~
15 ~~for the claim sought to be arbitrated have not been shown.~~

16 (a) Except as otherwise provided in this subchapter, a person gives
17 notice to another person by taking action that is reasonably necessary to
18 inform the other person in ordinary course, whether or not the other person
19 acquires knowledge of the notice.

20 (b)(1) A person has notice if the person has knowledge of the notice
21 or has received notice.

22 (2) A person receives notice when it comes to the person's
23 attention or the notice is delivered at the person's place of residence or
24 place of business, or at another location held out by the person as a place
25 of delivery of such communications.

26
27 ~~16-108-203. Appointment of arbitrators by court~~ When subchapter
28 applies.

29 ~~If the arbitration agreement provides a method of appointment of~~
30 ~~arbitrators, this method shall be followed. In the absence thereof, or if the~~
31 ~~agreed method fails or for any reason cannot be followed, or when an~~
32 ~~arbitrator appointed fails or is unable to act and his successor has not been~~
33 ~~duly appointed, the court on application of a party shall appoint one (1) or~~
34 ~~more arbitrators. An arbitrator so appointed has all the powers of one~~
35 ~~specifically named in the agreement.~~

36 (a) This subchapter governs an agreement to arbitrate made on or after

1 the effective date of this subchapter.

2 (b) This subchapter governs an agreement to arbitrate made before the
 3 effective date of this subchapter if all the parties to the agreement or to
 4 the arbitration proceeding so agree in a record.

5
 6 ~~16-108-204. Majority action by arbitrators~~ Effect of agreement to
 7 arbitrate – Party may not waive provisions.

8 ~~The powers of the arbitrators may be exercised by a majority unless~~
 9 ~~otherwise provided by the agreement or by this subchapter.~~

10 (a) Except as otherwise provided in subsections (b) and (c) of this
 11 section, a party to an agreement to arbitrate or to an arbitration proceeding
 12 may waive, or the parties may vary the effect of, the requirements of this
 13 subchapter to the extent permitted by law.

14 (b) Before a controversy arises that is subject to an agreement to
 15 arbitrate, a party to the agreement may not:

16 (1) Waive or agree to vary the effect of the requirements of:

17 (A) Section 16-108-205(a);

18 (B) Section 16-108-206(a);

19 (C) Section 16-108-208;

20 (D) Section 16-108-217(a);

21 (E) Section 16-108-217(b);

22 (F) Section 16-108-226; or

23 (G) Section 16-108-228;

24 (2) Agree to unreasonably restrict the right under § 16-108-209
 25 to notice of the initiation of an arbitration proceeding;

26 (3) Agree to unreasonably restrict the right under § 16-108-212
 27 to disclosure of any facts by a neutral arbitrator; or

28 (4)(A) Waive the right under § 16-108-216 of a party to an
 29 agreement to arbitrate to be represented by a lawyer at any proceeding or
 30 hearing under this subchapter.

31 (B) However, an employer and a labor organization may
 32 waive the right to representation by a lawyer in a labor arbitration.

33 (c) A party to an agreement to arbitrate or arbitration proceeding may
 34 not waive, or the parties may not vary the effect of, the requirements of:

35 (1) This section;

36 (2) Section 16-108-203(a);

- 1 (3) Section 16-108-207;
- 2 (4) Section 16-108-214;
- 3 (5) Section 16-108-218;
- 4 (6) Section 16-108-220(d);
- 5 (7) Section 16-108-220(e);
- 6 (8) Section 16-108-222;
- 7 (9) Section 16-108-223;
- 8 (10) Section 16-108-224;
- 9 (11) Section 16-108-225(a);
- 10 (12) Section 16-108-225(b);
- 11 (13) Section 16-108-229; or
- 12 (14) Section 16-108-230.

13

14 16-108-205. Hearing Application for judicial relief.

15 ~~Unless otherwise provided by the agreement:~~

16 ~~(1) The arbitrators shall appoint a time and place for the hearing and~~
 17 ~~cause notification to the parties to be served personally or by registered~~
 18 ~~mail not less than five (5) days before the hearing. Appearance at the~~
 19 ~~hearing waives notice. The arbitrators may adjourn the hearing from time to~~
 20 ~~time as necessary and, on request of a party and for good cause, or upon~~
 21 ~~their own motion, may postpone the hearing to a time not later than the date~~
 22 ~~fixed by the agreement for making the award unless the parties consent to a~~
 23 ~~later date. The arbitrators may hear and determine the controversy upon the~~
 24 ~~evidence produced notwithstanding the failure of a party duly notified to~~
 25 ~~appear. The court on application may direct the arbitrators to proceed~~
 26 ~~promptly with the hearing and determination of the controversy;~~

27 ~~(2) The parties are entitled to be heard, to present evidence material~~
 28 ~~to the controversy, and to cross-examine witnesses appearing at the hearing;~~

29 ~~(3) The hearing shall be conducted by all the arbitrators, but a~~
 30 ~~majority may determine any question and render a final award. If, during the~~
 31 ~~course of the hearing, an arbitrator for any reason ceases to act, the~~
 32 ~~remaining arbitrator or arbitrators appointed to act as neutrals may continue~~
 33 ~~with the hearing and determination of the controversy.~~

34 (a) Except as otherwise provided in § 16-108-228, an application for
 35 judicial relief under this subchapter must be made by motion to the court and
 36 heard in the manner provided by law or rule of court for making and hearing

1 motions.

2 (b)(1) Unless a civil action involving the agreement to arbitrate is
 3 pending, notice of an initial motion to the court under this subchapter must
 4 be served in the manner provided by law for the service of a summons in a
 5 civil action.

6 (2) Otherwise, notice of the motion must be given in the manner
 7 provided by law or rule of court for serving motions in pending cases.

8
 9 16-108-206. ~~Representation by attorney~~ Validity of agreement to
 10 arbitrate.

11 ~~A party has the right to be represented by an attorney at any~~
 12 ~~proceeding or hearing under this subchapter. A waiver thereof prior to the~~
 13 ~~proceeding or hearing is ineffective.~~

14 (a) An agreement contained in a record to submit to arbitration any
 15 existing or subsequent controversy arising between the parties to the
 16 agreement is valid, enforceable, and irrevocable except upon a ground that
 17 exists at law or in equity for the revocation of a contract.

18 (b) The court shall decide whether an agreement to arbitrate exists or
 19 a controversy is subject to an agreement to arbitrate.

20 (c) An arbitrator shall decide whether a condition precedent to
 21 arbitrability has been fulfilled and whether a contract containing a valid
 22 agreement to arbitrate is enforceable.

23 (d) If a party to a judicial proceeding challenges the existence of or
 24 claims that a controversy is not subject to an agreement to arbitrate, the
 25 arbitration proceeding may continue pending final resolution of the issue by
 26 the court, unless the court otherwise orders.

27
 28 16-108-207. ~~Witnesses—Subpoenas—Depositions—Fees~~ Motion to compel
 29 or stay arbitration.

30 ~~(a) The arbitrators may issue or cause to be issued subpoenas for the~~
 31 ~~attendance of witnesses and for the production of books, records, documents,~~
 32 ~~and other evidence, and shall have the power to administer oaths. Subpoenas~~
 33 ~~so issued shall be served, and upon application to the court by a party or~~
 34 ~~the arbitrators, enforced, in the manner provided by law for the service and~~
 35 ~~enforcement of subpoenas in a civil action.~~

36 ~~(b) On application of a party and for use as evidence, the arbitrators~~

1 ~~may permit a deposition to be taken, in the manner and upon the terms~~
2 ~~designated by the arbitrators, of a witness who cannot be subpoenaed or is~~
3 ~~unable to attend the hearing.~~

4 ~~(e) All provisions of law compelling a person under subpoena to~~
5 ~~testify are applicable.~~

6 ~~(d) Fees for attendance as a witness shall be the same as for a~~
7 ~~witness in the circuit court.~~

8 (a) On motion of a person showing an agreement to arbitrate and
9 alleging another person's refusal to arbitrate pursuant to the agreement:

10 (1) If the refusing party does not appear or does not oppose the
11 motion, the court shall order the parties to arbitrate; and

12 (2) If the refusing party opposes the motion, the court shall
13 proceed summarily to decide the issue and order the parties to arbitrate
14 unless it finds that there is no enforceable agreement to arbitrate.

15 (b)(1) On motion of a person alleging that an arbitration proceeding
16 has been initiated or threatened but that there is no agreement to arbitrate,
17 the court shall proceed summarily to decide the issue.

18 (2) If the court finds that there is an enforceable agreement to
19 arbitrate, it shall order the parties to arbitrate.

20 (c) If the court finds that there is no enforceable agreement, it may
21 not under subsection (a) or subsection (b) of this section order the parties
22 to arbitrate.

23 (d) The court may not refuse to order arbitration because the claim
24 subject to arbitration lacks merit or grounds for the claim have not been
25 established.

26 (e)(1) If a proceeding involving a claim referable to arbitration
27 under an alleged agreement to arbitrate is pending in court, a motion under
28 this section must be made in that court.

29 (2) Otherwise, a motion under this section may be made in any
30 court as provided in § 16-108-227.

31 (f) If a party makes a motion to the court to order arbitration, the
32 court on just terms shall stay any judicial proceeding that involves a claim
33 alleged to be subject to the arbitration until the court renders a final
34 decision under this section.

35 (g)(1) If the court orders arbitration, the court on just terms shall
36 stay any judicial proceeding that involves a claim subject to the

1 arbitration.

2 (2) If a claim subject to the arbitration is severable, the
3 court may limit the stay to that claim.

4
5 16-108-208. ~~Award~~ Provisional remedies.

6 ~~(a) The award shall be in writing and signed by the arbitrators~~
7 ~~joining in the award. The arbitrators shall deliver a copy to each party~~
8 ~~personally or by registered mail, or as provided in the agreement.~~

9 ~~(b) An award shall be made within the time fixed therefor by the~~
10 ~~agreement or, if not so fixed, within such time as the court orders on~~
11 ~~application of a party. The parties may extend the time in writing either~~
12 ~~before or after the expiration thereof. A party waives the objection that an~~
13 ~~award was not made within the time required unless he or she notifies the~~
14 ~~arbitrators of his or her objection prior to the delivery of the award to him~~
15 ~~or her.~~

16 (a) Before an arbitrator is appointed and is authorized and able to
17 act, the court, upon motion of a party to an arbitration proceeding and for
18 good cause shown, may enter an order for provisional remedies to protect the
19 effectiveness of the arbitration proceeding to the same extent and under the
20 same conditions as if the controversy were the subject of a civil action.

21 (b) After an arbitrator is appointed and is authorized and able to
22 act:

23 (1) The arbitrator may issue such orders for provisional
24 remedies, including interim awards, as the arbitrator finds necessary to
25 protect the effectiveness of the arbitration proceeding and to promote the
26 fair and expeditious resolution of the controversy, to the same extent and
27 under the same conditions as if the controversy were the subject of a civil
28 action; and

29 (2) A party to an arbitration proceeding may move the court for
30 a provisional remedy only if the matter is urgent and the arbitrator is not
31 able to act timely or the arbitrator cannot provide an adequate remedy.

32 (c) A party does not waive a right of arbitration by making a motion
33 under subsection (a) or subsection (b) of this section.

34
35 16-108-209. ~~Change of award by arbitrators~~ Initiation of arbitration.

36 ~~On application of a party or, if an application to the court is pending~~

1 under §§ 16-108-211—16-108-213, on submission to the arbitrators by the
 2 court under such conditions as the court may order, the arbitrators may
 3 modify or correct the award upon the grounds stated in § 16-108-213(a)(1) and
 4 (3) or for the purpose of clarifying the award. The application shall be made
 5 within twenty (20) days after delivery of the award to the applicant. Written
 6 notice thereof shall be given forthwith to the opposing party, stating that
 7 he or she must serve his objections thereto, if any, within ten (10) days
 8 from the notice. The award so modified or corrected is subject to the
 9 provisions of §§ 16-108-211—16-108-213.

10 (a)(1) A person initiates an arbitration proceeding by giving notice
 11 in a record to the other parties to the agreement to arbitrate:

12 (A) In the agreed manner between the parties;

13 (B) In the absence of agreement, by:

14 (i) Certified or registered mail, return receipt
 15 requested and obtained; or

16 (ii) Service as authorized for the commencement of a
 17 civil action.

18 (2) The notice must describe the nature of the controversy and
 19 the remedy sought.

20 (b) Unless a person objects for lack or insufficiency of notice under
 21 § 16-108-215(c) not later than the beginning of the arbitration hearing, the
 22 person, by appearing at the hearing, waives any objection to lack of or
 23 insufficiency of notice.

25 ~~16-108-210. Fees and expenses of arbitration~~ Consolidation of separate
 26 arbitration proceedings.

27 ~~Unless otherwise provided in the agreement to arbitrate, the~~
 28 ~~arbitrators' expenses and fees, together with other expenses incurred in the~~
 29 ~~conduct of the arbitration, not including counsel fees, shall be paid as~~
 30 ~~provided in the award.~~

31 (a) Except as otherwise provided in subsection (c) of this section,
 32 upon motion of a party to an agreement to arbitrate or to an arbitration
 33 proceeding, the court may order consolidation of separate arbitration
 34 proceedings as to all or some of the claims if:

35 (1) There are separate agreements to arbitrate or separate
 36 arbitration proceedings between the same persons, or one (1) of them is a

1 party to a separate agreement to arbitrate or a separate arbitration
2 proceeding with a third person;

3 (2) The claims subject to the agreements to arbitrate arise in
4 substantial part from the same transaction or series of related transactions;

5 (3) The existence of a common issue of law or fact creates the
6 possibility of conflicting decisions in the separate arbitration proceedings;
7 and

8 (4) Prejudice resulting from a failure to consolidate is not
9 outweighed by the risk of undue delay or prejudice to the rights of or
10 hardship to parties opposing consolidation.

11 (b) The court may order consolidation of separate arbitration
12 proceedings as to some claims and allow other claims to be resolved in
13 separate arbitration proceedings.

14 (c) The court may not order consolidation of the claims of a party to
15 an agreement to arbitrate if the agreement prohibits consolidation.

16
17 16-108-211. ~~Confirmation of an award~~ Appointment of arbitrator -
18 Service as a neutral arbitrator.

19 ~~Upon application of a party, the court shall confirm an award, unless~~
20 ~~within the time limits hereinafter imposed grounds are urged for vacating,~~
21 ~~modifying, or correcting the award, in which case the court shall proceed as~~
22 ~~provided in §§ 16-108-212 and 16-108-213.~~

23 (a)(1) If the parties to an agreement to arbitrate agree on a method
24 for appointing an arbitrator, that method must be followed unless the method
25 fails.

26 (2)(A) If the parties have not agreed on a method, the agreed
27 method fails, or an arbitrator appointed fails or is unable to act and a
28 successor has not been appointed, the court, on motion of a party to the
29 arbitration proceeding, shall appoint the arbitrator.

30 (B) An arbitrator so appointed has all the powers of an
31 arbitrator designated in the agreement to arbitrate or appointed pursuant to
32 the agreed method.

33 (b) An individual who has a known, direct, and material interest in
34 the outcome of the arbitration proceeding or a known, existing, and
35 substantial relationship with a party may not serve as an arbitrator required
36 by an agreement to be neutral.

1
2 16-108-212. ~~Vacating an award~~ Disclosure by arbitrator.

3 ~~(a) Upon application of a party, the court shall vacate an award in~~
4 ~~which:~~

5 ~~(1) The award was procured by corruption, fraud, or other undue~~
6 ~~means;~~

7 ~~(2) There was evident partiality by an arbitrator appointed as a~~
8 ~~neutral or corruption in any of the arbitrators or misconduct prejudicing the~~
9 ~~rights of any party;~~

10 ~~(3) The arbitrators exceeded their powers;~~

11 ~~(4) The arbitrators refused to postpone the hearing upon~~
12 ~~sufficient cause being shown therefor or refused to hear evidence material to~~
13 ~~the controversy or otherwise so conducted the hearing, contrary to the~~
14 ~~provisions of § 16-108-205, as to prejudice substantially the rights of a~~
15 ~~party; or~~

16 ~~(5)(A) There was no arbitration agreement and the issue was not~~
17 ~~adversely determined in proceedings under § 16-108-202 and the party did not~~
18 ~~participate in the arbitration hearing without raising the objection;~~

19 ~~(B) But the fact that the relief was such that it could~~
20 ~~not or would not be granted by a court is not ground for vacating or refusing~~
21 ~~to confirm the award.~~

22 ~~(b) An application under this section shall be made within ninety (90)~~
23 ~~days after delivery of a copy of the award to the applicant, except that, if~~
24 ~~predicated upon corruption, fraud, or other undue means, it shall be made~~
25 ~~within ninety (90) days after such grounds are known or should have been~~
26 ~~known.~~

27 ~~(c) In vacating the award on grounds other than those stated in~~
28 ~~subdivision (a)(5) of this section, the court may order a rehearing before~~
29 ~~new arbitrators chosen as provided in the agreement, or in the absence~~
30 ~~thereof, by the court in accordance with § 16-108-203, or, if the award is~~
31 ~~vacated on grounds set forth in subdivisions (a)(3) and (4) of this section,~~
32 ~~the court may order a rehearing before the arbitrators who made the award or~~
33 ~~their successors appointed in accordance with § 16-108-203. The time within~~
34 ~~which the agreement requires the award to be made is applicable to the~~
35 ~~rehearing and commences from the date of the order.~~

36 ~~(d) If the application to vacate is denied and no motion to modify or~~

1 ~~correct the award is pending, the court shall confirm the award.~~

2 (a) Before accepting appointment, an individual who is requested to
3 serve as an arbitrator, after making a reasonable inquiry, shall disclose to
4 all parties to the agreement to arbitrate and the arbitration proceeding and
5 to any other arbitrators any known facts that a reasonable person would
6 consider likely to affect the impartiality of the arbitrator in the
7 arbitration proceeding, including:

8 (1) A financial or personal interest in the outcome of the
9 arbitration proceeding; and

10 (2) An existing or past relationship with any of the parties to
11 the agreement to arbitrate or the arbitration proceeding, their counsel or
12 representatives, a witness, or another arbitrator.

13 (b) An arbitrator has a continuing obligation to disclose to all
14 parties to the agreement to arbitrate and the arbitration proceeding and to
15 any other arbitrators any facts that the arbitrator learns after accepting
16 appointment that a reasonable person would consider likely to affect the
17 impartiality of the arbitrator.

18 (c) If an arbitrator discloses a fact required by subsection (a) or
19 subsection (b) of this section to be disclosed and a party timely objects to
20 the appointment or continued service of the arbitrator based upon the fact
21 disclosed, the objection may be a ground under § 16-108-223(a)(2) for
22 vacating an award made by the arbitrator.

23 (d) If the arbitrator did not disclose a fact as required by
24 subsection (a) or subsection (b) of this section, the court under § 16-108-
25 223(a)(2) may vacate an award, upon timely objection by a party.

26 (e) An arbitrator appointed as a neutral arbitrator who does not
27 disclose a known, direct, and material interest in the outcome of the
28 arbitration proceeding or a known, existing, and substantial relationship
29 with a party is presumed to act with evident partiality under § 16-108-
30 223(a)(2).

31 (f) If the parties to an arbitration proceeding agree to the
32 procedures of an arbitration organization or any other procedures for
33 challenges to arbitrators before an award is made, substantial compliance
34 with those procedures is a condition precedent to a motion to vacate an award
35 on that ground under § 16-108-223(a)(2).

36

1 16-108-213. ~~Modification or correction of award~~ Action by majority.

2 ~~(a) Upon application made within ninety (90) days after delivery of a~~
3 ~~copy of the award to the applicant, the court shall modify or correct the~~
4 ~~award where:~~

5 ~~(1) There was an evident miscalculation of figures or an evident~~
6 ~~mistake in the description of any person, thing, or property referred to in~~
7 ~~the award;~~

8 ~~(2) The arbitrators have awarded upon a matter not submitted to~~
9 ~~them and the award may be corrected without affecting the merits of the~~
10 ~~decision upon the issues submitted; or~~

11 ~~(3) The award is imperfect in a matter of form not affecting the~~
12 ~~merits of the controversy.~~

13 ~~(b) If the application is granted, the court shall modify and correct~~
14 ~~the award so as to effect its intent and shall confirm the award as so~~
15 ~~modified and corrected. Otherwise, the court shall confirm the award as made.~~

16 ~~(c) An application to modify or correct an award may be joined in the~~
17 ~~alternative with an application to vacate the award.~~

18 If there is more than one (1) arbitrator, the powers of an arbitrator
19 must be exercised by a majority of the arbitrators, but all arbitrators shall
20 conduct the hearing under § 16-108-215(c).

21
22 16-108-214. ~~Judgment or decree on award~~ Immunity of arbitrator -
23 Competency to testify - Attorney's fees and costs.

24 ~~Upon the granting of an order confirming, modifying, or correcting an~~
25 ~~award, a judgment or decree shall be entered in conformity therewith and be~~
26 ~~enforced as any other judgment or decree. Costs of the application and of the~~
27 ~~proceedings subsequent thereto, and disbursements, may be awarded by the~~
28 ~~court.~~

29 (a) An arbitrator or an arbitration organization acting in that
30 capacity is immune from civil liability to the same extent as a judge of a
31 court of this state acting in a judicial capacity.

32 (b) The immunity afforded by this section supplements any immunity
33 under other law.

34 (c) The failure of an arbitrator to make a disclosure required by §
35 16-108-212 does not cause any loss of immunity under this section.

36 (d)(1) In a judicial, administrative, or similar proceeding, an

1 arbitrator or representative of an arbitration organization is not competent
 2 to testify and may not be required to produce records as to any statement,
 3 conduct, decision, or ruling occurring during the arbitration proceeding, to
 4 the same extent as a judge of a court of this state acting in a judicial
 5 capacity.

6 (2) Subdivision (d)(1) of this section does not apply to:

7 (A) The extent necessary to determine the claim of an
 8 arbitrator, arbitration organization, or representative of the arbitration
 9 organization against a party to the arbitration proceeding; or

10 (B) A hearing on a motion to vacate an award under § 16-
 11 108-223(a)(1) or (a)(2) if the movant establishes prima facie that a ground
 12 for vacating the award exists.

13 (e) If a person commences a civil action against an arbitrator,
 14 arbitration organization, or representative of an arbitration organization
 15 arising from the services of the arbitrator, organization, or representative
 16 or if a person seeks to compel an arbitrator or a representative of an
 17 arbitration organization to testify or produce records in violation of
 18 subsection (d) of this section, and the court decides that the arbitrator,
 19 arbitration organization, or representative of an arbitration organization is
 20 immune from civil liability or that the arbitrator or representative of the
 21 organization is not competent to testify, the court shall award to the
 22 arbitrator, organization, or representative reasonable attorney's fees and
 23 other reasonable expenses of litigation.

24
 25 ~~16-108-215. Judgment roll—Docketing Arbitration process.~~

26 ~~(a) On entry of judgment or decree, the clerk shall prepare the~~
 27 ~~judgment roll consisting, to the extent filed, of the following:~~

28 ~~(1) The agreement and each written extension of the time within~~
 29 ~~which to make the award;~~

30 ~~(2) The award;~~

31 ~~(3) A copy of the order confirming, modifying, or correcting the~~
 32 ~~award; and~~

33 ~~(4) A copy of the judgment or decree.~~

34 ~~(b) The judgment or decree may be docketed as if rendered in an~~
 35 ~~action.~~

36 (a)(1) An arbitrator may conduct an arbitration in such manner as the

1 arbitrator considers appropriate for a fair and expeditious disposition of
2 the proceeding.

3 (2) The authority conferred upon the arbitrator includes the
4 power to hold conferences with the parties to the arbitration proceeding
5 before the hearing and, among other matters, determine the admissibility,
6 relevance, materiality, and weight of any evidence.

7 (b) An arbitrator may decide a request for summary disposition of a
8 claim or particular issue:

9 (1) If all interested parties agree; or

10 (2) Upon request of one (1) party to the arbitration proceeding
11 if that party gives notice to all other parties to the proceeding, and the
12 other parties have a reasonable opportunity to respond.

13 (c)(1) If an arbitrator orders a hearing, the arbitrator shall set a
14 time and place and give notice of the hearing not less than five (5) days
15 before the hearing begins.

16 (2) Unless a party to the arbitration proceeding makes an
17 objection to lack or insufficiency of notice not later than the beginning of
18 the hearing, the party's appearance at the hearing waives the objection.

19 (3) Upon request of a party to the arbitration proceeding and
20 for good cause shown, or upon the arbitrator's own initiative, the arbitrator
21 may adjourn the hearing from time to time as necessary but may not postpone
22 the hearing to a time later than that fixed by the agreement to arbitrate for
23 making the award unless the parties to the arbitration proceeding consent to
24 a later date.

25 (4) The arbitrator may hear and decide the controversy upon the
26 evidence produced although a party who was notified of the arbitration
27 proceeding does not appear.

28 (5) The court, on request, may direct the arbitrator to conduct
29 the hearing promptly and render a timely decision.

30 (d) At a hearing under subsection (c) of this section, a party to the
31 arbitration proceeding has a right to:

32 (1) Be heard;

33 (2) Present evidence material to the controversy; and

34 (3) Cross-examine witnesses appearing at the hearing.

35 (e) If an arbitrator ceases or is unable to act during the arbitration
36 proceeding, a replacement arbitrator must be appointed under § 16-108-211 to

1 continue the proceeding and to resolve the controversy.

2
3 16-108-216. Applications to court Representation by lawyer.

4 ~~Except as otherwise provided, an application to the court under this~~
5 ~~subchapter shall be by motion and shall be heard in the manner and upon the~~
6 ~~notice provided by law or rule of court for the making and hearing of~~
7 ~~motions. Unless the parties have agreed otherwise, notice of an initial~~
8 ~~application for an order shall be served in the manner provided by law for~~
9 ~~the service of a summons in an action.~~

10 A party to an arbitration proceeding may be represented by a lawyer.

11
12 16-108-217. Court — Jurisdiction Witnesses — Subpoenas — Depositions -
13 Discovery.

14 ~~The term “court” means any circuit court of this state. The making of~~
15 ~~an agreement described in § 16-108-201 providing for arbitration in this~~
16 ~~state confers jurisdiction on the court to enforce the agreement under this~~
17 ~~subchapter and to enter judgment on an award thereunder.~~

18 (a)(1) An arbitrator may issue a subpoena for the attendance of a
19 witness and for the production of records and other evidence at any hearing
20 and may administer oaths.

21 (2) A subpoena must be served in the manner for service of
22 subpoenas in a civil action and, upon motion to the court by a party to the
23 arbitration proceeding or the arbitrator, enforced in the manner for
24 enforcement of subpoenas in a civil action.

25 (b)(1) In order to make the proceedings fair, expeditious, and cost
26 effective, upon request of a party to or a witness in an arbitration
27 proceeding, an arbitrator may permit a deposition of any witness to be taken
28 for use as evidence at the hearing, including a witness who cannot be
29 subpoenaed for or is unable to attend a hearing.

30 (2) The arbitrator shall determine the conditions under which
31 the deposition is taken.

32 (c) An arbitrator may permit such discovery as the arbitrator decides
33 is appropriate in the circumstances, taking into account the needs of the
34 parties to the arbitration proceeding and other affected persons and the
35 desirability of making the proceeding fair, expeditious, and cost-effective.

36 (d) If an arbitrator permits discovery under subsection (c) of this

1 section, the arbitrator may order a party to the arbitration proceeding to
2 comply with the arbitrator's discovery-related orders, issue subpoenas for
3 the attendance of a witness and for the production of records and other
4 evidence at a discovery proceeding, and take action against a noncomplying
5 party to the extent a court could if the controversy were the subject of a
6 civil action in this state.

7 (e) An arbitrator may issue a protective order to prevent the
8 disclosure of privileged information, confidential information, trade
9 secrets, and other information protected from disclosure to the extent a
10 court could if the controversy were the subject of a civil action in this
11 state.

12 (f) All laws compelling a person under subpoena to testify and all
13 fees for attending a judicial proceeding, a deposition, or a discovery
14 proceeding as a witness apply to an arbitration proceeding as if the
15 controversy were the subject of a civil action in this state.

16 (g)(1) The court may enforce a subpoena or discovery-related order for
17 the attendance of a witness within this state and for the production of
18 records and other evidence issued by an arbitrator in connection with an
19 arbitration proceeding in another state upon conditions determined by the
20 court so as to make the arbitration proceeding fair, expeditious, and cost
21 effective.

22 (2) A subpoena or discovery-related order issued by an
23 arbitrator in another state must be served in the manner provided by law for
24 service of subpoenas in a civil action in this state and, upon motion to the
25 court by a party to the arbitration proceeding or the arbitrator, enforced in
26 the manner provided by law for enforcement of subpoenas in a civil action in
27 this state.

28
29 16-108-218. Venue ~~Judicial enforcement of preaward ruling by~~
30 arbitrator.

31 ~~An initial application shall be made to the circuit court of the county~~
32 ~~in which the agreement provides the arbitration hearing shall be held or, if~~
33 ~~the hearing has been held, in the county in which it was held. Otherwise, the~~
34 ~~application shall be made in the county where the adverse party resides or~~
35 ~~has a place of business or, if he or she has no residence or place of~~
36 ~~business in this state, to the court of any county. All subsequent~~

1 ~~applications shall be made to the court hearing the initial application~~
2 ~~unless the court otherwise directs.~~

3 (a) If an arbitrator makes a preaward ruling in favor of a party to
4 the arbitration proceeding, the party may request the arbitrator to
5 incorporate the ruling into an award under § 16-108-219.

6 (b)(1) A prevailing party may make a motion to the court for an
7 expedited order to confirm the award under § 16-108-222, in which case the
8 court shall summarily decide the motion.

9 (2) The court shall issue an order to confirm the award unless
10 the court vacates, modifies, or corrects the award under § 16-108-223 or §
11 16-108-224.

12
13 16-108-219. ~~Appeals~~ Award.

14 ~~(a) An appeal may be taken from:~~

15 ~~(1) An order denying an application to compel arbitration made~~
16 ~~under § 16-108-202;~~

17 ~~(2) An order granting an application to stay arbitration made~~
18 ~~under § 16-108-202(b);~~

19 ~~(3) An order confirming or denying confirmation of an award;~~

20 ~~(4) An order modifying or correcting an award;~~

21 ~~(5) An order vacating an award without directing a rehearing; or~~

22 ~~(6) A judgment or decree entered pursuant to the provisions of~~
23 ~~this subchapter.~~

24 ~~(b) The appeal shall be taken in the manner and to the same extent as~~
25 ~~from orders or judgments in a civil action.~~

26 (a)(1)(A) An arbitrator shall make a record of an award.

27 (B) The record must be signed or otherwise authenticated
28 by any arbitrator who concurs with the award.

29 (2) The arbitrator or the arbitration organization shall give
30 notice of the award, including a copy of the award, to each party to the
31 arbitration proceeding.

32 (b)(1) An award must be made within the time specified by the
33 agreement to arbitrate or, if not specified in the agreement, within the time
34 ordered by the court.

35 (2)(A) The court may extend or the parties to the arbitration
36 proceeding may agree in a record to extend the time.

1 (B) The court or the parties may do so within or after the
2 time specified or ordered.

3 (3) A party waives any objection that an award was not timely
4 made unless the party gives notice of the objection to the arbitrator before
5 receiving notice of the award.

6
7 ~~16-108-220. Subchapter not retroactive~~ Change of award by arbitrator.
8 ~~This subchapter applies only to agreements made subsequent to its~~
9 ~~taking effect.~~

10 (a) On motion to an arbitrator by a party to an arbitration
11 proceeding, the arbitrator may modify or correct an award:

12 (1) Upon a ground stated in § 16-108-224(a)(1) or § 16-108-
13 224(a)(3);

14 (2) Because the arbitrator has not made a final and definite
15 award upon a claim submitted by the parties to the arbitration proceeding; or

16 (3) To clarify the award.

17 (b) A motion under subsection (a) of this section must be made and
18 notice given to all parties within twenty (20) days after the movant receives
19 notice of the award.

20 (c) A party to the arbitration proceeding must give notice of any
21 objection to the motion within ten (10) days after receipt of the notice.

22 (d) If a motion to the court is pending under § 16-108-222, § 16-108-
23 223, or § 16-108-224, the court may submit the claim to the arbitrator to
24 consider whether to modify or correct the award:

25 (1) Upon a ground stated in § 16-108-224(a)(1) or § 16-108-
26 224(a)(3);

27 (2) Because the arbitrator has not made a final and definite
28 award upon a claim submitted by the parties to the arbitration proceeding; or

29 (3) To clarify the award.

30 (e) An award modified or corrected under this section is subject to §
31 16-108-219(a) and §§ 16-108-222 – 16-108-224.

32
33 ~~16-108-221. Uniformity of interpretation~~ Remedies – Fees and expenses
34 of arbitration proceeding.

35 ~~This subchapter shall be so construed as to effectuate its general~~
36 ~~purpose to make uniform the law of those states which enact it.~~

1 (a)(1) An arbitrator may award any damages that a court is authorized
2 to award by law in a civil action involving the same claim, and the evidence
3 produced at the hearing justifies the award under the legal standard
4 otherwise applicable to the claim.

5 (2) An arbitrator may award reasonable attorney's fees and other
6 reasonable expenses of arbitration if such an award is authorized by law in a
7 civil action involving the same claim or by the agreement of the parties to
8 the arbitration proceeding.

9 (b)(1) As to all remedies other than those authorized by subsection
10 (a) of this section, an arbitrator may order such remedies as the arbitrator
11 considers just and appropriate under the circumstances of the arbitration
12 proceeding.

13 (2) The fact that such a remedy could not or would not be
14 granted by the court is not a ground for:

15 (A) Refusing to confirm an award under § 16-108-222; or

16 (B) Vacating an award under § 16-108-223.

17 (c) An arbitrator's expenses and fees, together with other expenses,
18 must be paid as provided in the award.

19 (d) If requested by a party at any time prior to receipt of notice of
20 the award, the arbitrator shall specify in the award the basis in fact
21 justifying and the basis in law authorizing the award.

22
23 16-108-222. Constitutionality Confirmation of award.

24 ~~If any provision of this subchapter, or the application thereof to any~~
25 ~~person or circumstance, is held invalid, the invalidity shall not affect~~
26 ~~other provisions or applications of the subchapter which can be given without~~
27 ~~the invalid provision or application, and to this end the provisions of this~~
28 ~~subchapter are severable.~~

29 After a party to an arbitration proceeding receives notice of an award,
30 the party may make a motion to the court for an order confirming the award,
31 at which time the court shall issue a confirming order unless the award is
32 modified or corrected under § 16-108-220 or § 16-108-224 or is vacated under
33 § 16-108-223.

34
35 16-108-223. ~~Short title~~ Vacating award.

36 ~~This subchapter may be cited as the "Uniform Arbitration Act."~~

1 (a) Upon motion to the court by a party to an arbitration proceeding,
2 the court shall vacate an award made in the arbitration proceeding if:

3 (1) The award was procured by corruption, fraud, or other undue
4 means;

5 (2) There was:

6 (A) Evident partiality by an arbitrator appointed as a
7 neutral arbitrator;

8 (B) Corruption by an arbitrator; or

9 (C) Misconduct by an arbitrator prejudicing the rights of
10 a party to the arbitration proceeding;

11 (3) An arbitrator refused to postpone the hearing upon showing
12 of sufficient cause for postponement, refused to consider evidence material
13 to the controversy, or otherwise conducted the hearing contrary to § 16-108-
14 215 so as to prejudice substantially the rights of a party to the arbitration
15 proceeding;

16 (4) An arbitrator exceeded the arbitrator's powers;

17 (5) There was no agreement to arbitrate, unless the person
18 participated in the arbitration proceeding without raising the objection
19 under § 16-108-215(c) not later than the beginning of the arbitration
20 hearing; or

21 (6) The arbitration was conducted without proper notice of the
22 initiation of an arbitration as required in § 16-108-209 so as to prejudice
23 substantially the rights of a party to the arbitration proceeding.

24 (b) A motion under this section must be filed within ninety (90) days
25 after the movant receives notice of the award under § 16-108-219 or within
26 ninety (90) days after the movant receives notice of a modified or corrected
27 award under § 16-108-220, unless the movant alleges that the award was
28 procured by corruption, fraud, or other undue means, in which case the motion
29 must be made within ninety (90) days after the ground is known or, by the
30 exercise of reasonable care, would have been known by the movant.

31 (c)(1) If the court vacates an award on a ground other than that set
32 forth in subsection (a)(5) of this section, it may order a rehearing.

33 (2) If the award is vacated on a ground stated in subdivision
34 (a)(1) or (a)(2) of this section, the rehearing must be before a new
35 arbitrator.

36 (3) If the award is vacated on a ground stated in subdivision

1 (a)(3), (a)(4), or (a)(6) of this section, the rehearing may be before the
2 arbitrator who made the award or the arbitrator's successor.

3 (4) The arbitrator must render the decision in the rehearing
4 within the same time as that provided in § 16-108-219(b) for an award.

5 (d) If the court denies a motion to vacate an award, it shall confirm
6 the award unless a motion to modify or correct the award is pending.

7
8 16-108-224. Repeal Modification or correction of award.

9 All acts or parts of acts which are inconsistent with the provisions of
10 this subchapter are hereby repealed.

11 (a) Upon motion made within ninety (90) days after the movant receives
12 notice of the award under § 16-108-219 or within ninety (90) days after the
13 movant receives notice of a modified or corrected award under § 16-108-220,
14 the court shall modify or correct the award if:

15 (1) There was an evident mathematical miscalculation or an
16 evident mistake in the description of a person, thing, or property referred
17 to in the award;

18 (2) The arbitrator has made an award on a claim not submitted to
19 the arbitrator and the award may be corrected without affecting the merits of
20 the decision upon the claims submitted; or

21 (3) The award is imperfect in a matter of form not affecting the
22 merits of the decision on the claims submitted.

23 (b)(1) If a motion made under subsection (a) of this section is
24 granted, the court shall modify or correct and confirm the award as modified
25 or corrected.

26 (2) Otherwise, unless a motion to vacate is pending, the court
27 shall confirm the award.

28 (c) A motion to modify or correct an award under this section may be
29 joined with a motion to vacate the award.

30
31 16-108-225. Judgment on award – Attorney's fees and litigation
32 expenses.

33 (a)(1) Upon granting an order confirming, vacating without directing a
34 rehearing, modifying, or correcting an award, the court shall enter a
35 judgment in conformity with the award.

36 (2) The judgment may be recorded, docketed, and enforced as any

1 other judgment in a civil action.

2 (b) A court may allow reasonable costs of the motion and subsequent
3 judicial proceedings.

4 (c) On application of a prevailing party to a contested judicial
5 proceeding under § 16-108-222, § 16-108-223, or § 16-108-224, the court may
6 add reasonable attorney's fees and other reasonable expenses of litigation
7 incurred in a judicial proceeding after the award is made to a judgment
8 confirming, vacating without directing a rehearing, modifying, or correcting
9 an award.

10
11 16-108-226. Jurisdiction.

12 (a) A court of this state having jurisdiction over the controversy and
13 the parties may enforce an agreement to arbitrate.

14 (b) An agreement to arbitrate providing for arbitration in this state
15 confers exclusive jurisdiction on the court to enter judgment on an award
16 under this subchapter.

17
18 16-108-227. Venue.

19 (a)(1) A motion under § 16-108-205 must be made in the court of the
20 county in which the agreement to arbitrate specifies the arbitration hearing
21 is to be held or, if the hearing has been held, in the court of the county in
22 which it was held.

23 (2) Otherwise, the motion may be made in the court of any county
24 in which an adverse party resides or has a place of business or, if no
25 adverse party has a residence or place of business in this state, in the
26 court of any county in this state.

27 (b) All subsequent motions must be made in the court hearing the
28 initial motion unless the court otherwise directs.

29
30 16-108-228. Appeals.

31 (a) An appeal may be taken from:

32 (1) An order denying a motion to compel arbitration;

33 (2) An order granting a motion to stay arbitration;

34 (3) An order confirming or denying confirmation of an award;

35 (4) An order modifying or correcting an award;

36 (5) An order vacating an award without directing a rehearing; or

1 (6) A final judgment entered under this subchapter.

2 (b) An appeal under this section must be taken as from an order or a
 3 judgment in a civil action.

4
 5 16-108-229. Relationship to Electronic Signatures in Global and
 6 National Commerce Act.

7 The provisions of this subchapter governing the legal effect, validity,
 8 and enforceability of electronic records or electronic signatures, and of
 9 contracts performed with the use of such records or signatures, conform to
 10 the requirements of Section 102 of the Electronic Signatures in Global and
 11 National Commerce Act, § 15 U.S.C. § 7001 et seq.

12
 13 16-108-230. Savings clause – Certain actions excluded.

14 (a) This subchapter does not affect an action or proceeding commenced
 15 or a right accrued before this subchapter takes effect.

16 (b) This subchapter does not apply to:

17 (1) Personal injury or tort matters;

18 (2) Employer-employee disputes; or

19 (3) An insured or beneficiary under any insurance policy or
 20 annuity contract.